



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149975

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 16, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$2,732 for the period of March, 2012 – December, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Lee Yang
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's household size at all times pertinent herein is three.
3. As part of the Petitioner's review for FS benefits, on December 27, 2011, the agency received an employment verification for the Petitioner. The employment verification states that the Petitioner

became permanently employed with FIS on October 21, 2011. The Petitioner submitted two pay statements for the pay periods ending November 16, 2011 and November 30, 2011. The pay statements indicate the Petitioner was employed at \$12/hour. For the pay period ending November 16, 2011, the Petitioner worked 79.75 regular hours, took 2 hours of vacation, and had 9.82 hours of overtime. For the pay period ending November 30, 2011, the Petitioner worked 65.35 regular hours and took 16 hours of vacation. Using this information the agency budgeted an average of 73.35 hours/pay period at \$12/hour for a monthly earned income of \$1,892.43.

4. On December 28, 2011, the agency issued a Notice of Decision informing the Petitioner that her monthly FS benefits would be \$253 effective January 1, 2012. The notice further informed the Petitioner that if her household's total monthly income (before taxes) went over \$2,008, she was required to report it by the 10th of the next month. If her gross income was already over the limit, she was not required to report any changes until the agency requested additional information.
5. On June 5, 2012, the Petitioner submitted a Six Month Report Form (SMRF). No changes in income were reported.
6. On June 13, 2012, the Petitioner submitted two pay statements to the agency. One statement is for the period ending May 16, 2012. It indicates the Petitioner worked 71.77 regular hours, took 10 hours of vacation and personal holiday and worked .33 hours of overtime. It also indicates the Petitioner's pay rate is \$12.21/hour. The second statement dated June 8, 2012 is not a pay statement. It is an expense reimbursement. It does not reflect any hours, only expenses to be reimbursed. Based on this information, the agency budgeted an average of 47.93 hours/pay period at \$12.21/hour for a monthly earned income of \$1,258.24/month.
7. On June 13, 2012, the agency received a wage match discrepancy alert. A fraud prevention/overpayment referral was made indicating a possible overpayment for the period of January, 2012 – June, 2012. No action was taken on this referral until March, 2013. At that time in March, 2013, the agency requested wage verification information from the Petitioner's employer for 2012.
8. On June 26, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would increase to \$405/month effective July 1, 2012 based on the agency budgeting income of \$1,258.24/month. It also informed the Petitioner that if her monthly income (before taxes) went over \$1,590.83, she must report by the 10th day of the next month.
9. On October 8, 2012, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would be \$409/month effective November 1, 2012. It also informed her that if her monthly income (before taxes) went over \$2,069, she must report by the 10th day of the next month.
10. On April 4, 2013, the agency received the Petitioner's 2012 employment and wage verification information from the Petitioner's employer. This information reported the Petitioner's monthly earned income as follows:

January, 2012	\$2,460.91
February, 2012	\$2,482.23
March, 2012	\$3,607.65
April, 2012	\$2,392.57
May, 2012	\$2,023.53
June, 2012	\$2,392.66
July, 2012	\$2,148.60
August, 2012	\$3,401.61

September, 2012	\$2,590.54
October, 2012	\$2,364.98
November, 2012	\$2,040.82
December, 2012	\$2,551.08

11. On May 8, 2013, the agency issued a Notification of FS Overissuance to the Petitioner informing her that the agency intended to recover an overissuance of benefits in the amount of \$3,011 for the period of January 1, 2012 – December 31, 2012 based on client error in failing to report a change in earned income.
12. On July 10, 2013, the agency issued a Notice of Adjustment to the Petitioner informing her that the agency revised the overpayment period to March 1, 2012 – December 31, 2012 and the amount of the overpayment to \$2,732.
13. On June 13, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

"Discovery" is “the date that the agency became aware of the potential that an overissuance may exist.” BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in June, 2012 for the period of January, 2012 – June, 2012. The agency took no action on this awareness until March, 2013. At that time, it became aware of the potential for an overissuance for the period of January 1, 2012 – December 31, 2012.

The agency has demonstrated that there was an overissuance of FS benefits to the Petitioner. The initial overissuance of benefits was agency error, not client error, when the Petitioner submitted accurate wage information to the agency but the agency incorrectly calculated the Petitioner’s average work hours/pay period. Specifically, when the agency calculated average work hours/pay period as 73.75 in November, 2011, it failed to consider that her November, 2011 pay statements included vacation time and overtime. It considered only “regular hours” worked. This resulted in a lower average number of hours/pay period and consequently a higher level of monthly FS benefits. Likewise, at the Petitioner’s six month review, the agency failed to consider that one pay statement was clearly an expense reimbursement check and calculated a significantly lower average work hours/pay period than it should have, again resulting in a higher level of monthly FS benefits. However, the Petitioner erred as well when she did not report that her income went over 130% of FPL. In each notice of decision, the Petitioner was advised that if her income exceeded a certain dollar amount, she was required to report it to the agency by the 10th day of the next month.

Despite the agency errors in calculating the monthly FS allotment, the agency demonstrated that the Petitioner’s income did exceed 130% of the FPL in each month of the overpayment period. The agency used the actual pay statements for 2012 from the Petitioner’s employer to demonstrate that her income exceeded the limit for reporting. The Petitioner produced a 2012 W-2 tax document showing her annual

income. This is not sufficient to rebut the agency's evidence that she was required to report her income when it exceeded the limit in particular months. The Petitioner was credible in stating that she did not intentionally fail to report her income. She did accurately submit information at the time of her reviews. Although her failure to report when her income was above the 130% FPL limit was not intentional, the agency may still recover any overissuance.

For the overpayment period of March, 2012 – December, 2012, the agency became aware of the potential for an overpayment in March, 2013. Even if the overpayment was due to agency error, the agency may recover for the 12 months previous to the discovery. The agency revised the initial overpayment period from January, 2012 – December, 2012 to March, 2012 – December, 2012.

I reviewed the overissuance worksheets completed by the agency in determining the amount of the overissuance. The agency used the actual wage information from the Petitioner's employer to determine the amount of benefits that the Petitioner was entitled to receive during the overpayment period. These calculations are accurate based on the evidence.

Based on all of the evidence presented, I conclude that the agency is entitled to recover an overissuance of \$2,732 for the period of March, 2012 – December, 2012.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of \$2,732 from the Petitioner for the period of March, 2012 – December, 2012.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

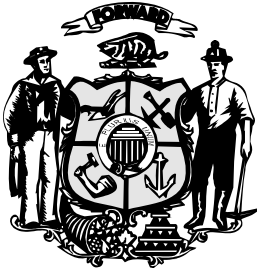
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of August, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 7, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability